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THE COMMLAW GROUP

June 8, 2017

Ex Parte

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: WC Docket Nos. 16-363 & 14-228– AT&T Petition for Forbearance

Dear Ms. Dortch:

This *ex parte* letter responds to the May 9, 2017 *ex parte* presentation and letter filed by AT&T Corp ("AT&T") in the above-numbered dockets ("AT&T *ex parte*").

Teliax, Inc. ("Teliax") is a competitive local exchange carrier ("CLEC") based in Denver, Colorado. The Company provides voice and data services to both retail and wholesale customers, including toll free ("8YY") origination service. Wholesale toll free traffic originated by end user customers served by other LECs is delivered to Teliax in Denver, via IP transport, without charge to the serving interexchange carrier ("IXC"). Many other LECs provide wholesale 8YY origination service.

Teliax performs an 8YY database query to identify the serving IXC and charges a Database Query ("DBQ") rate set forth in its FCC tariff. Teliax then provides the first point of switching; delivers the call to the correct IXC directly or via a tandem switch; and charges originating end office tariff rates (in Teliax's case, rates equal to those of the largest price cap LEC in Colorado – CenturyLink or at a commercially negotiated rate).

Despite AT&T's suggestions in its *ex parte* presentation (p. 14), in the case of Teliax, AT&T does not actually pay either Teliax's tariff DBQ rate (or originating end office rates), but rather it pays AT&T-created national average DBQ and tandem switching rates. As result of AT&T's refusal to pay rates specified in Teliax's tariff on file with the FCC, Teliax has sued AT&T in Colorado Federal District Court. *Teliax, Inc. d/b/a Teliax Colorado, LLC v. AT&T Corp.*, Civil Action No. 1:15-cv-01472-RBJ (D. Colo.). That case is pending.

AT&T touts the benefits of the FCC's phase-out of terminating end office charges to bill and keep (*e.g.*, AT&T *ex parte*, p. 3), but neglects to discuss the impact of "free or low-price" termination on robocalls. As terminating access rates fell, monthly robocall volumes, as tracked by YouMail (robocallindex.com) went from 939 billion in July 2015 (or 4.0 calls per capita) to 2.5 trillion in April 2017 (or 7.7 calls per capita). Needless to say, the overwhelming bulk of these calls are interstate or international in nature. This means LECs have been forced to switch and terminate as many as 1.56 trillion more unwanted calls per month than they did in July 2015 for little or no compensation, even as big IXCs, such as AT&T, are still paid for transporting those calls to LECs for termination to beleaguered end users.

This harms consumers. The unreimbursed costs of terminating calls are often borne by the terminating LEC's end users—the very people who do not want the robocalls in the first place—and/or reduce the LEC's profits and ability to invest in its own broadband network. The winners are AT&T and

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the robocallers, while the losers are LECs and consumers plagued by trillions of robocalls. When robocalls are considered, the results of the movement to bill and keep for terminating end office services are mixed.

AT&T's request for forbearance on terminating tandem charges would be expected to increase the profitability and volume of unwanted robocalls, while consumers are likely to pay for many of the foregone tandem switching and transport costs for those robocalls under the resulting, expanded bill and keep plan. While AT&T, which can still charge for transporting robocalls, will have more revenue to invest in broadband networks, tandem providers, including LECs, will have less revenue to invest in broadband networks. This puts a regulatory thumb on the scale against LECs and in favor of IXCs.

AT&T's arguments against so-called mileage pumping and traffic stimulation are tired and misplaced. The remedy for unreasonably high mileage charges is for AT&T to file Section 208 complaints against offending carriers. Also, the FCC already has in place rules against traffic stimulation (47 C.F.R. § 61.26(g)) that reduces the access rate to that of the largest price cap LEC in the affected state. As of July 1, 2017, that rate would be zero.

AT&T further argues that many 8YY Database Query Rates are unreasonable and should be eliminated because the rates diverge by carrier. AT&T's reasoning is flawed. Diversity of rates by carrier was contemplated when the DBQ rates were first authorized and tariffed.[1] AT&T ignores the cost of providing DBQ services that vary from carrier to carrier. For example, Teliax has invested in a license to be an SCP (service control point) owner-operator for the SOMOS toll free database at significant cost and has developed costly proprietary software to offer wholesale toll free origination services. Teliax is the smallest SCP owner-operator associated with SOMOS. Teliax has a right to recover its costs for DBQ service in accordance with FCC rules and as the market permits. Moreover, investment in advanced networks and services, especially by smaller companies, such as Teliax, is in the public interest.

Additionally, Teliax's DBQ-related costs are spread over lower volumes than similar costs of major carriers such as AT&T and Verizon. It stands to reason that, under traditional ratemaking principles, higher costs and lower volumes produce higher rates. By growing Teliax's wholesale business, its DBQ rates would likely fall over time. Yet, AT&T appears to want to drive Teliax out of the wholesale 8YY origination business by refusing to pay tariff rates.

Finally, Teliax corrects the misleading implications of page 15 (unnumbered) in the AT&T *ex parte*. The schematic clearly suggests Teliax's operations as its switch is in Denver, Colorado and deposition testimony in the *Teliax v. AT&T* suit refers to California-dialed 8YY calls handled by Teliax in Denver. It is easy to infer AT&T is claiming that it pays excessive rates for 8YY traffic originated in California but handled by Teliax in Colorado. However, when one looks at the facts, AT&T's argument falls flat and misleads the Commission.

In the event that an 8YY call was dialed in California and handled by either AT&T California (f/k/a Pacific Bell) or a large CLEC, the originating end office rates would be or equal to those of AT&T California. The same would hold true if the 8YY call was an Interconnected VoIP call under the FCC's VoIP Symmetry

[1] *See, e.g., Provision of Access for 800 Service*, Order on Reconsideration, 11 FCC Rcd 2014, at ¶ 11 (1995) (affirming its prior conclusion "that a per query charge would represent a cost-causative pricing structure." And that "To the extent commenters believe that LECs are attempting to recover costs not directly related to 800 database from 800 database query charges, this matter should be raised in conjunction with the tariff investigation of these rates.") Had the FCC believed otherwise it would have prescribed a nationwide DBQ rate.

Rule. 47 C.F.R. § 61.26(f). In the event a wireless customer placed the call, no originating end office rate would apply.

If one compares the AT&T California composite rate for Originating End Office-Local Switching and Common Trunk Port ($0.007316) to that of CenturyLink in Colorado (the rates charged by Teliax) ($0.002721), the serving IXC would save approximately 63% when Teliax provides the first point of switching in Colorado. And one must keep in mind that, despite these available savings, AT&T has engaged in "self-help" by refusing to pay tariff rates for traffic it admits it wants delivered. Teliax would charge the same originating end office rate for TDM and Interconnected VoIP calls, and no originating end office rate for wireless 8YY calls originated in California or any other place, for example.[2]

In sum the AT&T *ex parte* is quite misleading on several grounds. It fails to note that the movement of terminating end office charges towards bill and keep has likely fueled major increases in robocall volumes and that elimination of terminating tandem switching rates would likely contribute to an even greater number of robocalls. Neither does AT&T discuss the impact of bill and keep on the ability of LECs to invest in their own broadband networks.

AT&T's criticism of DBQ rates ignores fundamental ratemaking principles of cost and demand. AT&T's practice of refusing to pay tariff rates for access services provided on wholesale contradicts its complaints over the impact of CLEC access rates on AT&T's business. Finally, AT&T's example of a CLEC (Teliax) charging higher rates in Denver, Colorado for handling 8YY calls originated in California is factually wrong. AT&T cannot be believed in this proceeding. As many parties have argued, the Commission should reject AT&T's arguments and deny its petition for forbearance.

If you have any questions about this filing or need further information, please contact the undersigned.

Sincerely,

/s/ Robert H. Jackson
Robert H. Jackson
Counsel for Teliax, Inc.

cc: Honorable Ajit Pai
Honorable Mignon Clyburn
Honorable Michael Reilly
Kris Monteith
G. Patrick Webre
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Victoria Goldberg
William Kehoe
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[2] Indeed, Teliax has compared its rates for handling 8YY calls in Denver against the lowest rates charged by the largest CLEC in each state (partially tied to the largest price cap LEC in the applicable state) and found Teliax's rates to be lower.